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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,344	11/08/2001	Peter K. Law	37794-0032	5167
26633	7590	11/02/2005	EXAMINER	
HELLER EHRMAN WHITE & MCAULIFFE LLP 1717 RHODE ISLAND AVE, NW WASHINGTON, DC 20036-3001			PRIEBE, SCOTT DAVID	
			ART UNIT	PAPER NUMBER

1633

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/986,344	LAW, PETER K.	
	Examiner	Art Unit	
	Scott D. Priebe, Ph.D.	1633	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 24 October 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 33-51.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

Scott D. Priebe

Scott D. Priebe, Ph.D.
Primary Examiner
Art Unit: 1633

Continuation of 3. NOTE: The amendments limiting the "patient" to a human patient in the claims; limiting the suspension to one "in a form that allows fusion with ..." in claims 33 and 42; and limiting the culture to a "pure" culture are new limitations that would require further search and consideration. Broadening of the limitation "satellite myoblast cell" to embrace any type of satellite cell (claims 34, 43) and the added limitation of "fusion with ... fat cells" in claim 42 are new matter. Appellant has not indicated where either limitation is supported by the original disclosure. The term "satellite cell" is applied in the art in referring to cells other than myoblasts, e.g. perineuronal satellite cells (glial cells), which also occur in muscle.

Continuation of 11. does NOT place the application in condition for allowance because: The arguments are directed to the new limitations in the proposed claims, which have not been entered. These arguments are therefore moot, and have not been considered.

Continuation of 13. Other: In the interview of 20 May 2005, Appellant had agreed to file a corrected copy of the claims to incorporate amendments made in the non-compliant amendment of 01 Nov. 2004 that had been inadvertently omitted in the amendment filed 22 Feb. 2005. As indicated in the Office action of 24 May 2005, the action of 24 May 2005 was prepared with the understanding that the claims would be corrected as agreed. Appellant has not filed the agreed upon amendment. While most of the proposed amendments filed 24 Oct. 2005 would have obviated the need to incorporate the amendments of 01 Nov. 2004, in claim 33, the replacement of "between" with "close to" in line 12 in the 01 Nov. 2004 amendment was not addressed. For the purpose of appeal, Appellant is required to submit a proposed amendment of the claims submitted 22 Feb. 2005 to incorporate the amendments indicated in the claims submitted 01 Nov. 2004, as agreed upon in the interview. This should be done prior to any further proposed amendments to the claims. If no new amendments are proposed, and an appeal brief is filed without an amendment incorporating the changes from the 01 Nov. 2004 amendment, as agreed upon in the interview, the brief will be defective. If an RCE is filed, wherein the amendment of 24 Oct. 2005 is to be considered the only submission, or is filed with additional amendments that do not include the agreed upon claim amendments, the RCE will be defective for failing to include the changes from the 01 Nov. 2004 amendment, as agreed upon in the interview.

The proposed amendment to the specification would overcome the objection to the specification if presented in a form that complies with 37 CFR 1.121.